

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2020-01IT
April 30, 2020

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ISSUE

Adjusted Gross Income Tax-Market - Based Sourcing

Authority: [IC 6-3-2-2](#); Department of Revenue Emergency Rule, LSA Doc. 19-688 (January 1, 2020); Multistate Tax Commission Model Allocation and Apportionment General Rules (July 25, 2018).

A company ("Taxpayer") is seeking an opinion as to whether it is required to withhold on certain entities.

STATEMENT OF FACTS

Taxpayer is a corporation with headquarters outside Indiana. Taxpayer's investment management and investment advisory functions are controlled by a limited liability company ("LLC 1") taxed as a partnership. LLC 1 in turn owns all the membership interests in another entity ("Holdings") and a majority interest in a second LLC ("LLC 2"). Neither Holdings nor LLC 2 is headquartered in Indiana or has an Indiana office.

Over 95 percent of the income from Holdings and LLC 2 is attributed to Taxpayer and Taxpayer's affiliates. The remainder is allocated to owners, primarily individuals, holding a minority interest in the entities.

The revenue derived by Holdings and LLC 2 are derived from two sources, which can best be described as "Private Accounts" and "Pooled Funds." Private Accounts are generally pension plans, institutional investors, high net worth individuals, university endowments, and retail investors. The fees for Private Accounts are negotiated separately by each client.

The Pooled Fund customers include various SEC registered and unregistered United States and non-United States funds and unregistered private funds. The fees are negotiated with the funds themselves. Taxpayer provides its services directly to the funds. In most cases, Taxpayer does not know who the investors within the funds are. The Pooled Funds themselves are located in California and New York.

DISCUSSION

For purposes of this ruling, the following definitions apply:

- (1) "Emergency Rule" means the Department of State Revenue's Emergency Rules regarding the sourcing of receipts from services and other intangibles, published as Indiana Register Doc. 19-688 (January 1, 2020)
- (2) "MGAAR" means the Multistate Tax Commission Multistate General Allocation and Apportionment Regulations adopted February 21, 1973, as amended through February 24, 2017, and including section 18(c) as adopted July 25, 2018.

Taxpayer requests that the department rule on the sourcing of receipts from Private Accounts and Pooled Funds. For purposes of this analysis, any reference to receipts by Taxpayer include any receipts or income that flows through to Taxpayer from LLC 1, Holdings, LLC 2, or any other entity classified as a partnership or disregarded entity for federal tax purposes. Further, any knowledge or other facts attributed to LLC 1, Holdings, LLC 2, or any other affiliate of Taxpayer shall be imputed to Taxpayer.

The first issue is how the receipts should be characterized. In the department's Emergency Rule, LSA Doc. 19-688 (Jan. 1, 2020), the term "professional services" is undefined. In that context, [IC 6-3-2-2\(u\)\(3\)](#)¹ provides that, in the absence of a rule, "shall be sourced in the manner consistent with the Multistate Tax Commission model regulations for income tax apportionment as in effect on January 1, 2019, including any specialized industry provisions, except to the extent expressly inconsistent with this chapter."

MGAAR Reg. IV.17.(d).(4)(A) defines "professional services" as "services that require specialized knowledge and in some cases require a professional certification, license or degree." Among the specifically listed services are "bank and financial services, financial custodial services, [and] investment and brokerage services." In addition, the nature of these services do not result in a recharacterization under other provisions of MGAAR (e.g., medical services are characterized as "in-person services"). Thus, the relevant amounts to Taxpayer are for professional services in this case.

The next issue is where the fees from the professional services are to be attributed. First, Private Account Services must be analyzed. For individual clients, Emergency Rule Sec. 17 provides that "[i]n the case of professional services provided to an individual customer, the receipts from such services shall be sourced to the customer's state of primary residence, [subject to a special rule and exception to the special rule]." Assuming an individual's residence is provided to Taxpayer, the receipts from fees for Private Account Services should be attributed to that state of residence. To the extent the individual's residences are in Indiana, the fees from those customers are Indiana receipts.

With regard to Private Account Services provided to business and other institutional clients, a threshold issue is, who is the customer? For instance, in the case of a pension fund, is it the fund itself or the individuals receiving pensions? In this case, the client is the entity with whom Taxpayer has a direct contractual relationship—the fund itself. See also MGAAR Reg. IV.17.(d).(5), examples (xii) and (xiii) (providing generally that the location of a customer's customer is irrelevant to market-based sourcing of professional services).

Emergency Rule Sec. 18(2) provides that the receipts are to be attributed to the location where the contract is principally managed. Though the regulation does not provide specifically by whom the contract is principally managed, MGAAR Reg. IV.17.(d).(4)(C)1.b provides that the sourcing is "principally managed *by the customer*" (emphasis added). This is in accordance with Emergency Rule Sec. 18(5) which requires a business to determine where a contract is "principally managed by the customer" for certain contracts. Accordingly, in this case, assuming Taxpayer is able to determine where the contract is managed by a client, the fees from that contract are sourced to the client's state. Otherwise, Taxpayer shall use the rules otherwise provided in Emergency Rule Sec. 18.

The third issue is where receipts from Pooled Fund fees should be attributed. With regard to Pooled Fund fees from management on behalf of funds, as discussed above, Emergency Rule Sec. 18(2) provides sourcing to where the contract is principally managed by the customer. In that case, any funds received by Taxpayer should be attributed to the location where the contract for the relevant fund is managed by that fund, which will generally be the funds' primary place of operation, assuming such location is known to Taxpayer. Otherwise, Taxpayer shall use the rules otherwise provided in Emergency Rule Sec. 18.

RULING

With regard to Private Account Services provided to individuals, fees from those services shall be attributed to the individual's state of residence. With regard to fees from Private Account Services provided to business or institutional clients, the receipts shall be sourced to the state in which the contract between Taxpayer and the client is principally managed by the client. With regard to fees from Pooled Accounts, the fees shall be attributed to the location where the client (i.e., funds) principally manages the contract between Taxpayer and client.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

¹ As in Indiana Code currently. Under P.L.156-2020, this is recodified as [IC 6-3-2-2\(v\)](#) to reconcile two conflicting versions of [IC 6-3-2-2](#) enacted in 2019.

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